

Assembly Bill No. 1432

CHAPTER 511

An act to amend Sections 656 and 793 of, and to add Sections 656.5, 656.6, and 793.5 to, the Penal Code, relating to former jeopardy.

[Approved by Governor September 14, 2004. Filed
with Secretary of State September 14, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1432, Firebaugh. Former jeopardy.

The California and United States Constitutions provide that a person may not be put twice in jeopardy for the same offense. Existing statutory law provides that no prosecution or indictment of an accused person may be brought when a charged act is within the jurisdiction of another state, government, or country as well as this state, and the person has been acquitted or convicted of the same act in that other jurisdiction. A separate statute makes it a defense to any prosecution brought in this state that the accused was acquitted or convicted in a prosecution founded on the same act or omission in another state or country with concurrent jurisdiction.

This bill would limit this immunity and defense to apply only upon a conviction or acquittal in a prosecution under the laws of the United States, or of another state or territory of the United States. It would thus eliminate conviction or acquittal in another country as a bar to prosecution or indictment in California and as a defense in a trial in California based upon the same act or omission. With regard to a person acquitted or convicted in another country who, under this bill, would be subject to prosecution in California for the same act or omission, it would provide that he or she shall be entitled to credit for any actual time served in custody in a penal institution in that country in relation to the act or omission, and to any additional time credits that would have been awarded had the person been incarcerated in California. This bill would also forbid the violation of international treaties or laws to secure the return of a person convicted in another country of a crime committed in California in order to prosecute the person in California.

By eliminating statutory immunity for persons acquitted or convicted in other countries who would otherwise be subject to prosecution by local authorities in California, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

The people of the State of California do enact as follows:

SECTION 1. Section 656 of the Penal Code is amended to read:

656. Whenever on the trial of an accused person it appears that upon a criminal prosecution under the laws of the United States, or of another state or territory of the United States based upon the act or omission in respect to which he or she is on trial, he or she has been acquitted or convicted, it is a sufficient defense.

SEC. 2. Section 656.5 is added to the Penal Code, to read:

656.5. Any person convicted of a crime based upon an act or omission for which he or she has been acquitted or convicted in another country shall be entitled to credit for any actual time served in custody in a penal institution in that country for the crime, and for any additional time credits that would have actually been awarded had the person been incarcerated in California.

SEC. 3. Section 656.6 is added to the Penal Code, to read:

656.6. No international treaties or laws shall be violated to secure the return of a person who has been convicted in another country of a crime committed in California in order to prosecute the person in California.

SEC. 4. Section 793 of the Penal Code is amended to read:

793. When an act charged as a public offense is within the jurisdiction of the United States, or of another state or territory of the United States, as well as of this state, a conviction or acquittal thereof in that other jurisdiction is a bar to the prosecution or indictment in this state.

SEC. 5. Section 793.5 is added to the Penal Code, to read:

793.5. Any person convicted of a crime based upon an act or omission for which he or she has been acquitted or convicted in another country shall be entitled to credit for any actual time served in custody in a penal institution in that country for the crime.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or



changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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